

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

PART-TIME FACULTY ASSOCIATION)	
AT COLUMBIA,)	
Union-Respondent,)	
)	
and)	Case 13-CB-165873
)	
TANYA HARASYM, et al, INDIVIDUALS,)	
Charging Parties,)	
)	
and)	
)	
PART-TIME FACULTY ASSOCIATION)	
AT COLUMBIA,)	
Respondent,)	
)	
and)	Case 13-CB-202023
)	
CLINT VAUPEL,)	
Charging Party,)	
)	
and)	
)	
PART-TIME FACULTY ASSOCIATION)	
AT COLUMBIA,)	
Respondent,)	
)	
and)	Case 13-CB-202035
)	
COLUMBIA COLLEGE CHICAGO,)	
Charging Party.)	

**INDIVIDUAL CHARGING PARTIES' MOTION TO STRIKE
RESPONDENT'S EXCEPTIONS**

The Individual Charging Parties¹ move to strike the exceptions filed on July 12, 2018 by

¹ The Individual Charging Parties in Case 13-CB-165873 are Tanya Harasym, Larry Kapson, Eric Koppen, Weston Morris, Anthony Santiago, Jill Sultz and Clint Vaupel. The Individual Charging Party in Case 13-CB-202023 is Clint Vaupel.

Respondent Part-Time Faculty Association at Columbia College (“PFAC”), because they materially exceed the page limit for exceptions (or supporting briefs) provided for in the Board’s rules. In support of their motion, the Individual Charging Parties state as follows.

1. In its exceptions, PFAC purports to “incorporate[] by reference its briefing and argument from case 13-RC-146452 herein, as well as its Request for Review in that case” (PFAC Exc. at page 6). However, PFAC may not do so.

2. Section 102.46(a)(1)(i)(D) of the Board’s rules provides that, “[i]f no supporting brief is filed [as in the present case], the exceptions document must also include the citation of authorities and argument in support of the exceptions, in which event the exceptions document is subject to the *50-page limit for briefs* set forth in paragraph (h) of this section” (emphasis added). Section 102.46(h) of the Board’s rules provides that “[a]ny brief filed pursuant to this section *must not be combined with any other brief* and ... *must not exceed 50 pages* in length” (emphasis added).

3. In derogation of those rules, PFAC’s exceptions are 37 pages, and purport to incorporate its post-hearing brief in the representation case (Case 13-RC-146452) which was 35 pages, and its Request for Review in that case which was 23 pages.² PFAC’s 95 pages of briefs exceed the permitted length by nearly twice.³

4. The Board does not permit such circumvention of its rules. *Baddour, Inc.*, 281 NLRB 546, 549 n.4 (1986), enf’d, 848 F.2d 193 (6th Cir. 1988), cert. denied, 488 U.S. 944 (1988)

² This does not count PFAC’s motion to stay the Regional Director’s decision (7 pages), and its submissions of supplemental authority in the representation case (13-RC-146452).

³ To the extent the exceptions and the purportedly incorporated briefs are a brief, they also fail to conform to Section 102.5(a) of the Board’s rules, since they did not contain a subject index with page references and an alphabetical table of cases and other authorities cited.

(denying respondent's request for permission to incorporate by reference its brief to the ALJ in its brief to the Board, “inasmuch as it would result in the Respondent's brief being in excess of the 50-page limitation prescribed by the Board's Rules and Regulations”); *Pacific Beach Corporation*, 344 NLRB 1160 (2005) (rejecting appendix attached to brief that included additional argument, as “nothing more than an attempt to circumvent the Board's 50-page limit”); *I. W. G., Inc.*, 322 NLRB 69, 77 n.1 (1996), *enf'd in part & enf't denied in part on other grds*, 144 F.3d 685 (10th Cir. 1998) (granting General Counsel’s motion to strike respondent’s “attempt to incorporate by reference his posthearing brief into his exceptions brief because, by doing so, the page limit for briefs would be exceeded”).

5. Moreover, since PFAC did not obtain permission to submit a brief (or exceptions) in excess of 50 pages, PFAC failed to comply with Section 102.5(b) of the Board’s rules, which provides that “[r]equests for permission to exceed the page limits for documents filed with the Board must state the reasons for the requests. Unless otherwise specified, such requests must be filed not less than 10 days prior to the date the document is due.” See *I. W. G., Inc.*, 322 NLRB 69, 77 n.1 (denying respondent’s motion for permission to exceed page limit on briefs as untimely, after respondent had attempted to incorporate by reference his posthearing brief into his exceptions brief; Board relied on the rule that then appeared in Section 102.46(j) of the Board's rules⁴).

6. This is not PFAC’s first attempt to circumvent such Board rules. In the initial request for review PFAC filed on September 26, 2016 of the Regional Director’s decision in the related representation case (No. 13-RC-146452) (which was 25 pages in length) PFAC attached as Exhibit

⁴ The rule requiring that requests for permission to exceed the page limits for documents filed with the Board must be filed not less than 10 days prior to the date the document is due now appears in Section 102.5(b) of the Board’s rules.

A a copy of its post-hearing brief to the Regional Director (35 pages), and the petition directed the Board's attention to that attached brief for further arguments. The combined total was 60 pages of briefing. Following a motion to strike PFAC's petition for review on this basis, by letter of September 30, 2016, the Board's Associate Executive Secretary informed PFAC's counsel that:

It has come to the attention of this Office [through a motion to strike] that when you filed the Intervenor's Petition for Review (i.e., request for review), consisting of 22 pages, you attached a 35-page Closing Brief, dated July 18, 2016, submitted to the Hearing Officer who presided over this case in Region 13. Section 102.67(k)(1) of the Board's Rules and Regulations limits briefs to the Board to 50 pages. In this regard, the Board counts toward the 50-page limit any document not in evidence that is attached to the brief and contains argument. Briefs, by their nature, are considered argument. When the brief to the Hearing Officer is combined with your 22-page request for review, your document exceeds the 50-age limit. Therefore, your request for review in this matter cannot be transmitted to the Board for consideration at this time.

PFAC was directed to file a petition that conformed to the Board's 50-page limit. (A copy of this letter is submitted herewith as Exhibit 1.)

7. PFAC should not be permitted to continue to flout the Board's rules.

8. On July 16, 2018, Counsel for the General Counsel Sylvia Posey authorized undersigned counsel for the Individual Charging Parties to represent that the General Counsel joins in this motion.

9. On July 16, 2018, the attorney for Charging Party Columbia College Chicago ("the College") in Case 13-CB-202035, Alex Barbour, authorized undersigned counsel for the Individual Charging Parties to represent that the College joins in this motion.

Wherefore, the Individual Charging Parties (with the concurrence of the General Counsel and the College) respectfully request that PFAC's exceptions be stricken. At the very least, the Individual Charging Parties request that the Board strike PFAC's attempt to "incorporate[] by

reference its briefing and argument from case 13-RC-146452 herein, as well as its Request for Review in that case.”

Respectfully submitted,

/s/ Michael H. Slutsky

Attorney for Charging Parties Tanya Harasym, Larry Kapson, Eric Koppen, Weston Morris, Anthony Santiago, Jill Sultz and Clint Vaupel in Case 13-CB-165873; and for Charging Party Clint Vaupel in Case 13-CB-202023

Allison, Slutsky & Kennedy, P.C.
230 West Monroe Street, Suite 2600
Chicago, Illinois 60606
312-364-9400
Fax 312-326-9410
Slutsky@ask-attorneys.com

July 16, 2018

Certificate of Service

The undersigned attorney hereby certifies that he caused copies of the foregoing Individual Charging Parties' Motion to Strike Respondent's Exceptions (with accompanying exhibit) to be served on the persons listed below by email, this 16th day of July, 2018:

Michael P. Persoon
Despres, Schwartz & Geoghegan, Ltd
77 W. Washington St., Ste. 711
Chicago, Illinois 60602
mpersoon@dsgchicago.com

Terence Smith
Legal Counsel
Columbia College Chicago
600 S. Michigan Ave., Rm 507
Chicago, Illinois 60605
tsmith@colum.edu

Alex Barbour
Cozen O'Connor
123 North Wacker Drive, Suite 1800
Chicago, IL 60606
abarbour@cozen.com

Sylvia Posey
Counsel for the General Counsel
National Labor Relations Board
Region 13
219 S. Dearborn Street, Suite 808
Chicago, IL 60604
Sylvia.Posey@nrlb.gov

/s/ Michael H. Slutsky
Michael H. Slutsky